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ABSTRACT

Rules concerning unprofessional conduct are offered by the New York State Board of Regents. Attention is directed to: general provisions for all professions, health professions, and design professions (e.g., architecture and engineering), as well as special provisions for: the medical profession, the dentistry and dental hygiene professions, the veterinary medicine profession, the pharmacy profession, the optometry profession, the profession of ophthalmic dispensing, the accounting profession, certified shorthand reporting profession, the psychology profession, and the massage profession. Unprofessional conduct in the practice of any licensed or certified profession includes: (1) willful or grossly negligent failure to comply with provisions of federal, state, or local laws, or rules governing the practice of the profession; (2) exercising undue influence on the patient or client, including the promotion of sale of services, goods, or drugs in order to exploit the patient/client; (3) conduct in the practice of a profession that shows evidence of moral unfitness to practice the profession; or (4) willfully making or filing a false report. (SW)

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RULES OF THE NEW YORK STATE BOARD OF REGENTS RELATING TO DEFINITIONS OF UNPROFESSIONAL CONDUCT

With amendments adopted through November 1984

HE 019 969

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PART 29

UNPROFESSIONAL CONDUCT
(Statutory authority: Education Law § 6506)

Sec.
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Historical Note

Part (§ 29.1) filed Aug. 4, 1971; repealed, new Part (§§ 29.1-29.13) filed Aug. 2, 1977 eff. Oct. 1, 1977.

Section 29.1 General provisions for all professions. (a) Unprofessional conduct shall be the conduct prohibited by this section. The provisions of these rules applicable to a particular profession may define additional acts or omissions as unprofessional conduct and may establish exceptions to these general prohibitions.

(b) Unprofessional conduct in the practice of any profession licensed or certified pursuant to title VIII of the Education Law shall include:

(1) willful or grossly negligent failure to comply with substantial provisions of Federal, State or local laws, rules or regulations governing the practice of the profession;

(2) exercising undue influence on the patient or client, including the promotion of the sale of services, goods, appliances or drugs in such manner as to exploit the patient or client for the financial gain of the practitioner or of a third party;

(3) directly or indirectly offering, giving, soliciting, or receiving or agreeing to receive, any fee or other consideration to or from a third party for the referral of a patient or client or in connection with the performance of professional services;

(4) permitting any person to share in the fees for professional services, other than: a partner, employee, associate in a professional firm or corporation, professional subcontractor or consultant authorized to practice the same profession, or a legally authorized trainee practicing under the supervision of a licensed practitioner. This prohibition shall include

any arrangement or agreement whereby the amount received in payment for furnishing space, facilities, equipment or personnel services used by a professional licensee constitutes a percentage of, or is otherwise dependent upon, the income or receipts of the licensee from such practice, except as otherwise provided by law with respect to a facility licensed pursuant to article 28 of the Public Health Law or article 13 of the Mental Hygiene Law;

(5) conduct in the practice of a profession which evidences moral unfitness to practice the profession;

(6) willfully making or filing a false report, or failing to file a report required by law or by the Education Department, or willfully impeding or obstructing such filing, or inducing another person to do so;

(7) failing to make available to a patient or client, upon request, copies of documents in the possession or under the control of the licensee which have been prepared for and paid for by the patient or client;

(8) revealing of personally identifiable facts, data or information obtained in a professional capacity without the prior consent of the patient or client, except as authorized or required by law;

(9) practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform, or performing without adequate supervision professional services which the licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a person's life or health is in danger;

(10) delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified, by training, by experience or by licensure, to perform them;

(11) performing professional services which have not been duly authorized by the patient or client or his or her legal representative;

(12) advertising or soliciting for patronage that is not in the public interest:

(i) Advertising or soliciting not in the public interest shall include but not be limited to advertising or soliciting that:

(a) is false, fraudulent, deceptive, misleading, sensational or flamboyant;

(b) represents intimidation or undue pressure;

(c) uses testimonials;

(d) guarantees any service;

(e) makes any claim relating to professional services or products or the cost or price therefor which cannot be substantiated by the licensee, who shall have the burden of proof;

(f) makes claims of professional superiority which cannot be substantiated by the licensee, who shall have the burden of proof; or

(g) offers bonuses or inducements in any form other than a discount or reduction in an established fee or price for a professional service or product.

(ii) The following shall be deemed appropriate means of informing the public of the availability of professional services:

(a) informational advertising not contrary to the foregoing prohibitions; and

(b) the advertising in a newspaper, periodical or professional directory or on radio or television of fixed prices, or a stated range of prices, for specified routine professional services, provided that there is an additional charge for related services which are an integral part of the overall service being provided by the licensee, the advertisement shall so state, and provided further that the advertisement indicates the period of time for which the advertised prices shall be in effect;

(iii) (a) all licensees placing advertisements shall maintain, or cause to be maintained, an exact copy of each advertisement, transcript, tape or videotape therof as appropriate for the medium used, for a period of one year after its last appearance. This copy shall be made available for inspection upon demand of the Education Department or in the case of physicians, physician's and specialist's assistants, the Department of Health;

(b) A licensee shall not compensate or give anything of value to representatives of the press, radio, television or other communications media in anticipation of or in return for professional publicity in a news item;

(iv) No demonstrations, dramatizations or other portrayals of professional practice shall be permitted in advertising on radio or television;

(13) failing to respond within 30 days to written communications from the Education Department or the Department of Health and to make available any relevant records with respect to an inquiry or complaint about the licensee's unprofessional conduct. The period of 30 days shall commence on the date when such communication was delivered personally to the licensee. If the communication is sent from either department by registered or certified mail, with return receipt requested, to the address appearing in the last registration the period of 30 days shall commence on the date of delivery to the licensee, as indicated by the return receipt.

(14) violating any term of probation or condition or limitation imposed on the licensee by the Board of Regents pursuant to Education Law section 6511.

Historical Note

Sec. filed Aug. 4, 1971; repealed, new filed Aug. 2, 1977; amds. filed: Oct. 3, 1972; March 31, **1981 eff. April 29, 1981.**

29.2 General provisions for health professions. (a) Unprofessional conduct shall also include, in the professions of:

medicine	ophthalmic dispensing
acupuncture	psychology
physical therapy	social work
physician's assistant	massage
specialist's assistant	occupational therapy
chiropractic	speech-language pathology
dentistry	audiology
dental hygiene	nursing
pharmacy	(registered professional nurse,
podiatry	licensed practical nurse):
optometry	

(1) abandoning or neglecting a patient or client under and in need of immediate professional care, without making reasonable arrangements for the continuation of such care, or abandoning a professional employment by a group practice, hospital, clinic or other health care facility, without reasonable notice and under circumstances which seriously impair the delivery of professional care to patients or clients;

(2) willfully harassing, abusing or intimidating a patient either physically or verbally;

(3) failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient. Unless otherwise provided by law, all patient records must be retained for at least six years. Obstetrical records and records of minor patients must be retained for at least six years, and until one year after the minor patient reaches the age of 21 years;

(4) using the word "Doctor" in offering to perform professional services without also indicating the profession in which the licensee holds a doctorate;

(5) failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensed professional;

(6) upon a patient's written request, failing to make available to a patient, or, to another licensed health practitioner consistent with that practitioner's authorized scope of practice, copies of the record required by paragraph (3) of this subdivision and copies of reports, test records, evaluations or X-rays relating to the patient which are in the possession or under the control of the licensee, or failing to complete forms or reports required for the reimbursement of a patient by a third party. Reasonable fees may be charged for such copies, forms or reports, but prior payment for the professional services to which such records relate may not be required as a condition for making such reports available. A practitioner may, however, withhold information from a patient if, in the reasonable exercise of his or her professional judgment, he or she believes release of such information would adversely affect the patient's health; and this section shall not require release, to the parent or guardian of a minor, of records or information relating to venereal disease or abortion except with the minor's consent. This provision shall apply in lieu of section 29.1(b)(7) of this Part;

(7) guaranteeing that satisfaction or a cure will result from the performance of professional services;

(8) ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient;

(9) claiming or using any secret or special method of treatment which the licensee refuses to divulge to the State Board for the profession;

(10) failing to wear an identifying badge, which shall be conspicuously displayed and legible, indicating the practitioner's name and professional title authorized pursuant to the Education Law, while practicing as an employee or operator of a hospital, clinic, group practice or multiprofessional facility, or at a commercial establishment offering health services to the public;

(11) entering into an arrangement or agreement with a pharmacy for the compounding and/or dispensing of coded or specially marked prescriptions;

(12) with respect to all professional practices conducted under an assumed name, other than facilities licensed pursuant to article 28 of the Public Health Law or article 13 of the Mental Hygiene Law, failing to post conspicuously at the site of such practice the names and the licensure field of all of the principal professional licensees engaged in practice at that site (*i.e.*, principal partners, officers or principal shareholders).

Historical Note

Sec. filed Aug. 2, 1977; amds. filed: Oct. 3, 1977; Nov. 3, 1977; Aug. 3, 1978; Oct. 24, 1978 eff. Dec 1, 1978.

29.3 General provisions for design professions. (a) Unprofessional conduct shall also include, in the professions of architecture and landscape architecture, engineering and land surveying:

(1) being associated in a professional capacity with any project or practice known to the licensee to be fraudulent or dishonest in character, or not reporting knowledge of such fraudulence or dishonesty to the Education Department;

(2) failing to report in writing to the owner or to the owner's designated agent any unauthorized or improperly authorized substantial disregard by any contractor of plans or specifications for construction or fabrication, when professional observation or supervision of the work is provided for in the agreement between the owner and the design professional or when supervision of the work is under the control of the design professional;

(3) certifiying by affixing the licensee's seal to work not performed by the licensee or under the licensee's supervision, or to which the licensee has not given his or her written professional evaluation;

(4) having a substantial financial interest, without the knowledge and approval of the client or employer, in any product or in the bids or earnings of any contractor, manufacturer or supplier on work for which the professional has responsibility;

(5) permitting any person to share in the fees for professional services, other than: a partner, employee, associate in a professional firm or corporation, subcontractor or consultant. This prohibition shall include any arrangement or agreement whereby the amount received in payment for furnishing space, facilities, equipment, or personnel services used by a professional licensee constitutes a percentage of or is otherwise dependent upon the income or receipts of the licensee from such practice. This provision shall apply in lieu of section 29.1(b)(4) of the Part;

(6) accepting any form of compensation from more than one party for services on the same project without fully disclosing the circumstances and receiving approval from all interested parties; or

(7) participating as a member, advisor or employee or a government body in those actions or deliberations which pertain to services provided by the practitioner or his or her organization for such government body.

(b) Unprofessional conduct shall not be construed to include the employment, with the knowledge of the client, of qualified consultants to perform work in which the consultant has special expertise. This provision shall apply in conjunction with section 29.1(b)(9) of this Part.

Historical Note

Sec. filed Aug. 2, 1977 eff. Oct. 1, 1977.

29.4 Special provisions for the profession of medicine. (a) Unprofessional conduct in the practice of medicine shall include all conduct prohibited by sections 29.1 and 29.2 of this Part except as provided in this section, and shall also include the following:

(1) knowingly or willfully performing a complete or partial autopsy on a deceased person without lawful authority;

(2) failing to comply with a signed agreement to practice medicine in New York State in an area designated by the Commissioner of Education as having a shortage of physi-

cians or refusing to repay medical education costs in lieu of such required service, or failing to comply with any provision of a written agreement with the State or any municipality within which the licensee has agreed to provide medical service, or refusing to repay funds in lieu of such service as consideration of awards made by the State or any municipality thereof for his or her professional education in medicine, or failing to comply with any agreement entered into to aid his or her medical education;

(3) a physician who prescribes or dispenses lenses or frames for the correction of vision shall be subject to the provisions of sections 29.8 and 29.9 of this Part relating to unprofessional conduct in optometry and/or ophthalmic dispensing;

(4) in the conduct of psychological research, failing to undertake reasonable efforts to remove the possible harmful aftereffects of emotional stress as soon as the design of the research permits, or failing to inform prospective research subjects or their authorized representatives fully of the danger of serious aftereffects, if such danger exists, before they are utilized as research subjects;

(5) in the interpretation of the provisions of section 29.1(b)(5) of this Part and in the treatment of sexual dysfunction as well as in other areas of the practice of psychiatry:

(i) immoral conduct shall include any physical contact of a sexual nature between physician and patient; but immoral conduct shall not include the use of films and/or other audiovisual aids with individuals or groups in the development of appropriate responses to overcome sexual dysfunction;

(ii) in therapy groups, immoral conduct shall include activities which promote explicit physical sexual contact between group members during sessions.

Historical Note

Sec. filed Aug. 2, 1977 eff. Oct. 1, 1977.

29.5 Special provisions for the professions of dentistry and dental hygiene. Unprofessional conduct in the practice of dentistry and dental hygiene shall include all conduct prohibited by sections 29.1 and 29.2 of this Part except as provided in this section, and shall also include the following:

(a) failing to comply with a signed agreement to practice dentistry in New York State in an area designated by the Commissioner of Education as having a shortage of dentists or refusing to repay dental education costs in lieu of such required service, or failing to comply with any provision of a written agreement with the State or any municipality within which the licensee has agreed to provide dental service, or refusing to repay funds in lieu of such service as consideration of awards made by the State or any municipality thereof for his or her professional education in dentistry, or failing to comply with any agreement entered into to aid his or her dental education.

(b) claiming professional superiority or special professional abilities, attainments, methods or resources, except that a practitioner who has completed a program of specialty training approved by the Board of Regents in a specialty recognized as such by the Board of Regents, or who can demonstrate to the satisfaction of the department the completion of the substantial equivalent of such a program, may advertise or otherwise indicate the specialty. A practitioner who has completed all of the requirements for specialty qualification except an examination may advertise or otherwise indicate the additional training which has been acquired. The phrase *practice limited to* shall be deemed a claim of

special professional abilities, and may be used only by dentists who have completed specialty training satisfactory to the department or dentists who have restricted their practice to a dental specialty prior to January 1, 1979. This subdivision shall apply in addition to section 29.1(b)(12)(iii)(f) of this Part.

Historical Note

Sec. filed Aug. 2, 1977; amds. filed: Oct. 24, 1978; April 28, 1980 eff. May 30, 1980. Amended (b).

29.6 Special provisions for the profession of veterinary medicine. (a) Unprofessional conduct in the practice of veterinary medicine shall include all conduct prohibited by section 29.1 of this Part except as provided in this section, and shall also include the following:

(1) claiming or using any secret or special method of treatment which the licensee refuses to divulge to the State Board for the profession;

(2) failing to exercise adequate supervision over persons who are authorized to practice only under the supervision of the licensee;

(3) failing to maintain adequate records of visits, diagnoses and prescribed treatments for a period of at least three years;

(4) using the word "Doctor" in offering to perform professional services without also indicating that the licensee holds a doctorate in veterinary medicine;

(5) claiming professional superiority or special professional abilities, attainments, methods or resources, except that a specialist may indicate a specialty that has been recognized as such by the Board of Regents. This provision shall apply in lieu of section 29.1(b)(12)(iii)(f) of this Part;

(6) guaranteeing that satisfaction or a cure will result from the performance of professional services;

(7) excessive administering of treatment or use of treatment facilities not warranted by the condition of the animal patient;

(8) abandoning or neglecting an animal patient under and in need of immediate care, without making reasonable arrangements for the continuation of such care; or

(9) entering into an arrangement or agreement with a pharmacy for the compounding and/or dispensing of coded or specially marked prescriptions.

(b) Distribution of information to members of a union, association or other organized group which has a contractual arrangement with a practitioner or practitioners for the provision of veterinary services at specific prices, which state the details of the arrangement including the names, addresses and telephone numbers of the participating practitioners, shall be deemed an appropriate means of informing the public of the availability of services.

Historical Note

Sec. filed Aug. 2, 1977 eff. Oct. 1, 1977.

29.7 Special provisions for the profession of pharmacy. (a) Unprofessional conduct in the practice of pharmacy shall include all conduct prohibited by sections 29.1 and 29.2

of this Part except as provided in this section, and shall also include the following:

(1) dispensing a written prescription which does not bear the name, address and age of the patient for whom it was intended; the date on which it was written; the name, strength, if applicable, and the quantity of the drug prescribed; directions for use, if applicable; and, the name, address, telephone number, profession and signature of the prescriber; provided that the pharmacist may write on the prescription the address and age of the patient, the strength and quantity of the drug prescribed, the directions for use and the prescriber's address, telephone number and profession if these are missing or unclear. If the address and age of the patient and the address, telephone number and profession of the prescriber are missing from the prescription, the pharmacist shall not be required to enter any of these items on the prescription if the information is otherwise readily available in the records of the pharmacy. An order for a drug to be dispensed for an inpatient in a health care facility by the pharmacy of that facility may be transmitted to the pharmacy in accordance with written procedures approved by the medical or other authorized board of the facility. The items of information required by this paragraph which are found in the records regularly maintained by the facility and which are not essential to the execution of the order need not appear on the order which is transmitted to the pharmacy. A drug which is dispensed for an inpatient in a health care facility by the pharmacy of that facility may be labeled in accordance with the policy adopted by the medical or other authorized board of the facility. That policy shall insure that all the information required by law to be placed on prescription labels is readily available to all concerned parties and that accuracy and safety prevail in the dispensing process. Prescriptions written for controlled substances shall meet the requirements of Article 33 of the Public Health Law. The address of a patient in a hospital or other health care facility may, for the purpose of a prescription, be that of the facility. An order for a drug for a particular patient issued by a practioner authorized to prescribe, and transmitted to a pharmacy for dispensing, shall constitute a prescription.

(2) failure by a pharmacist to reduce to writing a prescription transmitted orally which writing shall include all the information required by paragraph (1) of this subdivision and the signature or readily identifiable initials of the receiver of the oral prescription, provided that oral prescriptions for controlled substances shall meet the requirements of Article 33 of the Public Health Law.

(3) failure by a pharmacist dispensing a prescription to enter on the prescription the date of dispensing and to sign or initial legibly the prescription in such a manner as not to interfere with any other information on the prescription; provided that when the prescription is dispensed by an intern, the prescription shall bear the signature or readily identifiable initials of the intern and of the pharmacist who is supervising the intern.

(4) refilling a prescription without entering on the reverse of the prescription the date of the refill and the signature or readily identifiable initials of the pharmacist and of the intern, if applicable, dispensing the refill, except as provided in paragraph (8) of this subdivision. As a refill instruction, the pharmacist may accept a number of times, a time period, such as one year, or the Latin phrase "pro re nata" (abbreviated prn-meaning "as needed"). In the case of the latter, the pharmacist shall refill the prescription only once. The pharmacist receiving an oral order to refill a prescription shall reduce the order to writing and shall sign or initial it legibly as the recipient of the oral order. When a prescription is refilled, the date placed on the label shall be the date of the refill.

(5) using or substituting without authorization one or more drugs in the place of the drug or drugs specified in a prescription. Unauthorized use or substitution occurs if the same is done

without the knowledge and consent of the prescriber. If other than the ingredients specified are utilized by the pharmacist in compounding or dispensing the prescription, improper substitution shall be presumed unless there shall be entered upon the reverse of the original prescription information setting forth the facts of the substitution, the date, time and manner in which authorization for substitution was given and the signature of the pharmacist who received such authorization.

(6) failure to identify a generic product dispensed on a prescription by writing the name of the manufacturer and of the distributor, if different, on the prescription and on the label, except as otherwise provided in Education Law section 6816-a(1)(c).

(7) failure to number prescriptions consecutively and file them in a numerical or other form which provides for ready retrieval of the prescriptions; provided that orders for drugs to be dispensed for inpatients in a health care facility, including but not limited to a general hospital, in the pharmacy of that facility under a drug distribution system approved by the medical or other authorized board of the facility, need not be numbered if the orders are otherwise readily available and retrievable; and, provided further that prescriptions for controlled substances shall be filed in accordance with the provisions of Article 33 of the Public Health Law.

(8) failure to maintain in a form which provides for ready retrieval of prescriptions a daily record of all prescriptions filled and refilled which indentifies clearly the practitioner who ordered the prescription, the patient for whom the prescription is intended, the signature or readily identifiable initials of the pharmacist who filled or refilled the prescription, and the number assigned to the prescription where applicable. The record of the dispensing of a drug for an inpatient in a health care facility, including but not limited to a general hospital, by the pharmacy of that facility may be maintained in a form which is consistent with the record of the total health service provided to the patient provided the information required by this paragraph is readily retrievable and available. Original prescriptions filed in accordance with the provisions of paragraph (7) of this subdivision may constitute the record of the initial filling of those prescriptions. The daily record may be maintained by a manual system or, alternatively, by an electronic data processing system which meets the following requirements:

(i) the system shall provide adequate safeguards against improper manipulation or alteration of stored records.

(ii) arrangements shall be made which assure completeness and continuity of prescription records if the relationship between a pharmacy and a supplier of data processing services terminates for any reason.

(iii) the system shall provide retrieval of information regarding original dispensing and the refilling of prescriptions.

(iv) a pharmacist, and a pharmacy intern, if applicable, using a computerized system shall sign or initial the original prescription at the time of the first dispensing as provided in paragraph (3) of this subdivision and the initials of the pharmacist shall be entered into the computer record of the dispensing.

(v) for all refills of a prescription, the records introduced into the system shall be sufficient if:

(a) the initials of the pharmacist who dispensed the refill are entered at the time of dispensing; and

(b) a printout is produced of all prescriptions filled and refilled each day and the pharmacist(s) whose initials appear(s) on the printout sign(s) the printout to indicate that it is an accurate record.

(vii) a pharmacy that employs a computerized system shall have an auxiliary procedure which shall be used for documentation of all new and refilled prescriptions dispensed during system downtime. The auxiliary procedure shall provide for the entry into the computer of all data collected during the downtime, and the pharmacist shall insure that the maximum number of refills authorized on the original prescription has not been exceeded.

(viii) only pharmacists and pharmacy interns shall enter prescription data into the computerized system, and only pharmacists and pharmacy interns shall access the data.

(9) except as otherwise provided in 16 CFR Part 1700, failure to package a drug in a child-resistant container unless either the prescriber or the patient requests otherwise. Such request shall be documented in the records of the pharmacy. Child-resistant containers shall not be reused.

(10) failure by each pharmacist or pharmacy intern on duty to wear a clearly visible badge prepared in accordance with either of the following specifications:

(i) (a) the badge shall measure at least 1" × 3" and shall be white with black lettering;

(b) the name of the pharmacist or of the pharmacy intern shall constitute the first line. The title "Pharmacist" or "Pharmacy Intern", whichever is applicable, shall constitute the second line. No other marking or information of any kind shall appear on the badge; and

(c) the name of the pharmacist or of the pharmacy intern shall appear on the badge in the same form as it appears on the current registration or the limited permit. Initials may be used for the middle name and for the first name, if necessary, because of space limitations.

(ii) a pharmacist or a pharmacy intern practicing in a hospital or other health care facility may wear a badge of such design adopted by the institution for the identification of all health care professionals provided that the badge indicates clearly the wearer's name and the title "Pharmacist" or "Pharmacist Intern".

(11) advertisements of the prices of prescription drugs which do not comply with the following provisions:

(i) the advertised price shall be in effect for a period of time stated in the advertisement.

(ii) when the advertising of prescription prices forms part of a larger advertisement which includes the offering of general merchandise, the advertising pertaining to prescription prices shall be separated physically, such as by a box, from the advertising pertaining to general merchandise.

(iii) nothing in this subdivision shall be construed to prevent the use in advertising of a statement to the effect that the price for which any prescription will be filled is available on request.

(iv) such advertisement shall comply with the "Prescription Drug Consumer Price Listing" requirements set forth in section 200.200 of Title 21 of the Code of Federal Regulations, as amended.

(12) advertising or soliciting professional practice by means of providing physicians, or others authorized to prescribe, with prescription blanks imprinted with either the name of the prescription or the name of the pharmacy.

(13) failing to make prescription fee or price information readily available by providing such information upon request and upon the presentation of a prescription for pricing or dis-

pensing. Nothing in this section shall be construed to prohibit the quotation of price information on a prescription drug to a potential consumer by telephone.

(14) placing in stock of any pharmacy any part of an prescription compounded or dispensed which is returned by a patient; provided, however, that in a health care facility, including but not limited to a general hospital, which has its own pharmacy and in which unit-dose medication is dispensed to inpatients, each dose being individually sealed and labeled with the name of the drug, dosage strength, manufacturer's control number and expiration date, the unused unit dose of medication may be returned to the pharmacy of the facility for redispensing; and provided further that unused medication may be returned to pharmacies by residential health care facilities in accordance with the provisions of 10 NYCRR 731.12(o).

(15) repacking of drugs in a pharmacy, except by a pharmacist or under his/her immediate and personal supervision. Labels on repacked drugs shall bear sufficient information for proper identification and safety. A repacking record shall be maintained, including the name, strength, lot number, quantity and name of the manufacturer and/or distributor of the drug repacked, the date of the repacking, the number of packages prepared, the number of dosage units in each package, the signature of the person performing the repacking operation, the signature of the pharmacist who supervised the repacking, and such other identifying marks added by the pharmacy for internal recordkeeping purposes. Drugs repacked for in-house use only shall have an expiration date 12 months, or 50 percent of the time remaining to the manufacturer's expiration date, whichever is less, from the date of repacking. For the repacking of drugs by manufacturers and wholesalers, the provisions of Part 210 and 211 of title 21, Code of Federal Regulations, shall apply. Repacking records shall be maintained for five years and shall be made available to the department for review and copying.

(16) holding for sale, offering for sale and selling adulterated and/or misbranded drugs, devices and cosmetics. Any drug, device or cosmetic shall be deemed to be adulterated and/or misbranded if:

(i) it is not manufactured in accordance with the good manufacturing practices specified in Parts 210 and 211 of title 21, Code of Federal Regulations, as amended; provided that a drug manufactured by a pharmacy for in-house use may be manufactured in accordance with protocols, including documentation by means of a batch record, which insure the meeting of established standards for purity and potency; and

(ii) at any time it fails to meet standards for purity, potency, labeling, safety and effectiveness established under the Federal Food, Drug and Cosmetic Act, as amended.

(17) holding for sale, offering for sale, or selling:

(i) any drug later than the date, if any, marked upon the label as indicative of the date beyond which the contents cannot be expected beyond reasonable doubt to be safe and effective; provided, however, that when such drug is identified as an outdated drug by segregation from regular stock or by other means, the holding of such drug beyond its expiration date shall not be deemed a violation of this paragraph. When the expiration date is expressed by month and year, the expiration date shall be the last day of the month indicated; or

(ii) any drug, the nature of which requires storage under special conditions of temperture control as indicated either on the labeling, in the directions for storage of said drug contained in an official compendium, or as directed by common prudence, unless such special condition of temperature control shall have been complied with during the entire period of time in which such drug has been held for sale.

(18) the sale of drugs at auction without filing with the State Board of Pharmacy, at least seven days prior to the date of said auction, a notice giving the date, time and place of the auction. At such auction, drugs in bulk or in open containers may be sold in one lot only to a registered pharmacy. The drugs shall be removed to the premises of the purchaser promptly and the board notifed as to the disposition of such drugs; provided, however, that drugs found, by the representative of the board assigned to such auction, to be unfit for human use by virtue of age, adulteration and/or misbranding shall be destroyed voluntarily in the presence of the said representative or shall be quarantined by the representative pending action for seizure and destruction.

(19) holding for sale, offering for sale, selling or distributing a new drug or an investigational new drug, which is not recognized as a new drug or an investigational new drug under the provisions of Part 310 or Part 312 of title 21, Code of Federal Regulations.

(2) using colors and dyes in drugs and/or cosmetics which have not been approved for such use under the provisions of the Federal Food, Drug and Cosmetic Act, as amended.

(21) abandoning the premises of a registered establishment. Premises shall be deemed abandoned if the registrant vacates the premises without surrendering the certificate of registration to the State Board of Pharmacy and without making appropriate arrangements for the disposal of prescription-required drugs.

(22) aiding and abetting an unlicensed person to dispense drugs.

(i) Subject to the limitations set forth in subparagraph (ii) of this paragraph, an unlicensed person may assist a pharmacist in the dispensing of drugs by:

(a) receiving written prescriptions;

(b) typing prescription labels;

(c) keying prescription data for entry into a computer-generated file or retrieving prescription data from the file in accordance with the provisions of subclause (ii)(b)(5) of this paragraph;

(d) getting drugs from stock and returning them to stock;

(e) getting prescription files and other manual records from storage and locating prescriptions;

(f) counting dosage units of drugs;

(g) placing dosage units of drugs in appropriate containers;

(h) affixing the prescription label to the containers;

(i) preparing manual records of dispensing for the signature or initials of the pharmacist; and

(j) handing or delivering completed prescriptions to the patient or the patient's agent.

(ii) Limitations on assistance by an unlicensed person.

(a) No pharmacist shall obtain the assistance of more than one unlicensed person in the performance of the activities set forth in clauses (b)-(i) of subparagraph (i) of this paragraph.

(b) Unlicensed persons shall not be authorized to:

(1) receive oral prescription from prescribers;

(2) interpret and evaluate a prescription for conformance with legal requirements, authenticity, accuracy and interaction of the prescribed drug with other known prescribed and over-the-counter drugs;

(3) determine the product to be dispensed;

(4) measure, weigh, compound or mix ingredients;

(5) enter prescriptions into or retrieve prescriptions from a computer-generated file, as provided for in subparagraph (8)(vii) of this subdivision, except that:

(i) an unlicensed person may key prescription data for the approval of the pharmacist, provided that the pharmacist enters the data into the file along with his or her initials as the dispenser of the prescription; and

(ii) an unlicensed person may retrieve prescription data from the file for review by the pharmacist, provided that when the prescription is to be refilled, the pharmacist shall enter his or her initials as the dispenser of the refill, together with the date on which the prescription was refilled;

(6) sign or initial any record of dispensing required to be maintained by law;

(7) counsel patients, or

(8) perform any other function involving the exercise of professional judgment

(c) No drug which is dispensed with the assistance of an unlicensed person, as provided in subparagraph (i) of this paragraph, shall be dispensed without the review and approval of the pharmacist.

(b) Nothing in this Part shall be construed to prevent the ownership of a firm or corporate practice in this State by an unlicensed person or persons or to prevent any contractual arrangement computing the salary of professional employees or the amount due the owner of such firm or corporation or a person leasing space or equipment to such firm or corporation on the basis of a percentage of the receipts from the performance of professional services. This provision shall apply in lieu of section 29.1(b)(4) of this Part.

Historical Note

Sec. filed Aug. 2, 1977; amd. filed March 31, 1981; repealed, new filed March 30, 1984; amd., filed July 31, 1984 eff. Aug. 27, 1984. Added (a)(22).

29.8 Special provisions for the profession of optometry. (a) Unprofessional conduct in the practice of optometry shall include all conduct prohibited by sections 29.1 and 29.2 of this Part, except as provided in this section, and shall also include the following:

(1) advertisements of the prices of frames or lenses which do not identify the lenses as single vision, bifocal or trifocal; the specific type of bifocal or trifocal lenses; and as either glass or plastic. Advertisements which indicate that a number of frame types are available at a stated price at an establishment shall not be prohibited; provided, however, that stock sufficient to meet any demand which may be reasonably expected must be maintained at the location. Advertisements of the prices of contact lenses shall state whether the lenses are hard or soft. Any advertised price shall be in effect for a period of time stated in the advertisement;

(2) aiding and abetting, directly or indirectly, the conduct or advertising of any employer, firm or associate if such conduct or advertising conflicts with the foregoing regulations in this Part. It shall also be unprofessional conduct for a licensee to continue in the employment of an employer who has been found to have advertised in violation of this Part after a preliminary hearing. Notice of such preliminary hearing shall be given in writing to the licensee and to the employer. It shall state the specific violation or violations, and that continuation of the licensee's employment after the charges are sustained may constitute unprofessional conduct by the licensee. It shall also state that both the licensee and the employer shall have the right to appear at the preliminary

hearing, the right to be represented by counsel, and the rights set forth in section 6510 of the Education Law;

(3) failing to provide a patient, upon request, with the patient's prescription, including the name, address and signature of the prescriber and date of the prescription;

(4) failing to adhere to standards for ophthalmic materials as set forth in regulations of the Commissioner of Education; or

(5) failing to wear an indentifying badge as required by section 29.2(a)(10) of this Part, while working in an establishment which dispenses eyeglasses or lenses to the public.

(b) Nothing in this Part shall be construed to prevent the sale of eyeglasses or lenses for the correction of vision by any person, firm or corporation in accordance with the provisions of section 7106(2) of the Education Law, or to prevent any contractual arrangement between any such person, firm or corporation, its professional employees, or a person leasing space or equipment to such firm or corporation under which the amount due any of such parties is computed on the basis of a percentage of the receipts from the performance of professional services. This provision shall apply in lieu of section 29.1(b)(4) of this Part.

Historical Note

Sec. filed Aug. 2, 1977; amds. filed: Oct. 24, 1978; March 31, 1981 eff. April 29, 1981. Amended (a)(1).

29.9 Special provisions for the profession of ophthalmic dispensing. (a) Unprofessional conduct in the practice of ophthalmic dispensing shall include all conduct prohibited by sections 29.1 and 29.2 of this Part, except as provided in this section, and shall also include the following:

(1) advertisements of the prices of frames or lenses which do not identify the lenses as single vision, bifocal or trifocal; the specific type of bifocal or trifocal lenses, and as either glass or plastic. Advertisements which indicate that a number of frame types are available at a stated price at an establishment shall not be prohibited; provided, however, that stock sufficient to meet any demand which may be reasonably expected must be maintained at the location. Advertisements of the prices of contact lenses shall state whether the lenses are hard or soft. Any advertised price shall be in effect for a period of time stated in the advertisement;

(2) aiding and abetting, directly or indirectly, the conduct or advertising of any employer, firm or associate if such conduct or advertising conflicts with the foregoing regulations. It shall also be unprofessional conduct for a licensee to continue in the employment of an employer who has been found to have advertised in violation of these regulations after a preliminary hearing. Notice of such preliminary hearing shall be given in writing to the licensee and to the employer. It shall state the specific violation or violations, and that continuation of the licensee's employment after the charges are sustained may constitute unprofessional conduct by the licensee. It shall also state that both the licensee and the employer shall have the right to appear at the preliminary hearing, the right to be represented by counsel, and the rights set forth in section 6510 of the Education Law;

(3) failing to fill the prescription in which the refractive error of the eye at a vertex distance is indicated and to dispense the proper effective power of the prescription as adapted and fitted to the patient. Such prescription may not be modified without the approval of the prescriber and unless this approval is noted on the prescription;

(4) failing to adhere to standards for ophthalmic materials as set forth in regulations of the Commissioner of Education; or

(5) failing to wear an identifying badge, as required by section 29.2 (a)(10) of this Part, while working in an establishment which dispenses eyeglasses or lenses to the public.

(b) Nothing in this Part shall be construed to prevent the sale of eyeglasses or lenses for the correction of vision by any person, firm or corporation in accordance with the provisions of section 7126(1) of the Education Law, or to prevent any contractual arrangement between any such person, firm or corporation, its professional employees, or a person leasing space or equipment to such firm or corporation under which the amount due any of such parties is computed on the basis of a percentage of the receipts from the performance of professional services. This provision shall apply in lieu of section 29.1 (b)(4) of this Part.

Historical Note

Sec. filed Aug. 2, 1977; amds. filed: Oct. 24, 1978; March 31, 1981 eff. April 29, 1981. Amended (a)(1).

29.10 Special provisions for the profession of public accountancy. (a) Unprofessional conduct in the practice of public accountancy shall include all conduct prohibited by section 29.1 of this Part, except as provided in this section, and shall also include the following:

(1) in expressing an opinion on representations in the financial statements which the public accountant examined:

(i) failing to disclose a material fact known to the licensee which is not disclosed in the financial statement but disclosure of which is necessary to make the financial statements not misleading; or

(ii) failing to report any material misstatement known to the licensee to appear in the financial statements; or

(iii) failing to acquire sufficient information to warrant the expression of an opinion, or the licensee's exceptions are sufficiently material to negate the expression of an opinion; or

(iv) failing to direct attention to any material departure from generally accepted accounting principles or to disclose any material omission of generally accepted auditing procedures applicable in the circumstances;

(2) allowing any person other than a partner or a duly authorized employee to engage in the public practice of accountancy in the licensee's name or in the name of his or her firm, this paragraph not being intended to apply to the use of firm names by successors;

(3) issuing in the public accountant's name, or permitting his or her firm to issue in its name, a report purporting to be based upon an examination by the licensee or his or her firm of financial statements, when any material portion of the examination of such state-

ments and related records, including the examination of any material financial statements or data incorporated in the financial statements reported upon, has not been made either:

(i) by the public accountant or a partner or an employee; or

(ii) with the approval of the public accountant or his or her firm, by a certified public accountant of a state, territory or possession of the United States or the District of Columbia or the holder of an equivalent certificate issued by the proper authorities of another country, or a firm partially composed of such certified public accountants or holders of equivalent certificates, or by a public accountant of the State of New York;

(4) making a written forecast of future transactions or permitting such a forecast to be issued in the licensee's name or his or her firm's name without setting forth:

(i) the character of work performed;

(ii) the sources of information used and major assumptions made, and the degree of responsibility taken with respect thereto; and

(iii) a statement that the public accountant or firm does not vouch for the achievability of the forecast;

(5) expressing an independent opinion or knowingly permitting his or her firm to express an opinion on financial statements of an enterprise, whether such enterprise is a for-profit or a not-for-profit enterprise, if the licensee or a partner or employee in the firm is not independent with respect to such enterprise. Independence will be considered to be impaired if the public accountant, or partner in the firm, owns or is committed to acquire any direct or material indirect financial interest in the enterprise or had a direct or material indirect financial relationship with any officer, director, employee or principal stockholder of the enterprise. Independence will be considered to be impaired if the licensee, a partner in the firm or a member of his or her or the partner's immediate family, is or has been a director or officer of the enterprise, or is or has been involved in any situation creating a conflict of interest, during the period covered by the examination or at the time of issuance of a report;

(6) offering or rendering professional services under an arrangement whereby no fee will be charged unless a specified finding or result is attained, or where the fee is otherwise contingent upon the findings or results of such services. The fees charged may vary depending on the complexity of the service rendered. Fees are not regarded as contingent if fixed by courts or other public authorities or, in tax matters, if determined on the basis of the results of judicial proceedings or the findings of governmental agencies;

(7) permitting the public accountant's name to be associated with statements purporting to show financial position or results of operations in such a manner as to imply that he or she is acting as an independent certified public accountant or public accountant, unless:

(i) the licensee has complied with generally accepted auditing standards. The State Board for Public Accountancy may consider statements on auditing standards promulgated by the Auditing Standards Committee of the American Institute of Certified Public Accountants to be interpretations of accepted auditing standards. Departures from such standards, or other standards considered by the State Board to be applicable in the circumstances, must be justified by a licensee who does not follow them; and

(ii) the licensee expresses an opinion on financial statements presented in conformity with generally accepted accounting principles. The State Board may consider those principles promulgated by the American Institute of Certified Public Accountants and by the

Financial Accounting Standards Board, among others, to be generally accepted accounting principles. Due to unusual circumstances having a material effect on the financial statements taken as a whole, an opinion may be expressed that contains a departure from a generally accepted accounting principle. In such case, the opinion on financial statements must describe the departure, the approximate effects thereof, if predictable, and the reasons that such compliance with the principle would result in an otherwise misleading statement;

(8) refusing to furnish to a client upon request:

(i) copies of tax returns; or

(ii) copies of reports or other documents that were previously issued to or for such client; or

(iii) any accounting or other records belonging to or obtained for the client which the public accountant may have had occasion to remove from the client's premises or to receive for the client's account; but this shall not preclude making copies of such documents when they form the basis for work done by the licensee; but in no event shall the public accountant have a lien of these accounting or other records; or

(iv) copies of an accountant's working papers, if such working papers include records which would ordinarily constitute part of the client's books and records and are not otherwise available to the client. Under these conditions, the information on these working papers shall be treated the same as if it were part of the client's books and records; or

(v) any of the above copies or records because the public accountant's fee has not been paid, unless the client agreed to pay such fee in advance;

(vi) this paragraph shall apply in lieu of section 29.1(b)(7) of this Part;

(9) permitting any partner, or employee acting as such, to perform any service for his or her client which the licensee or the firm is not permitted to perform;

(10) soliciting or advertising for clients in violation of section 29.1(b)(12) of this Part, which shall be interpreted as follows: soliciting and advertising not in the public interest shall include, but not be limited to, obtaining clients through any other corporation or business used as a "feeder"; using the title of certified public accountant or public accountant together with that of any other business or occupation on any letterhead, card, circular or other media, if the certified public accountant or public accountant conjointly engages in such business or occupation with his or her public accounting practice; provided, however, that nothing herein shall prohibit a certified public accountant or public accountant licensed to practice another profession from including such professional designation on his or her letterhead or business card or upon any listing or other designation of his or her office;

(11) in determining "incompetence" or "negligence" within the meaning of section 6509(2) of the Education Law, the Board of Regents and the Education Department may consider among others, the generally accepted auditing standards and accounting principles promulgated by the American Institute of Certified Public Accountants and by the Financial Accounting Standards Board;

(12) the definition of *unprofessional conduct* in this section and in section 29.1 of this Part shall apply to all partnerships and corporations authorized to practice public accountancy.

Historical Note

Sec. filed Aug. 2, 1977; amds. filed: Oct. 24, 1978; Jan. 20, 1982 eff. Feb. 22, 1982. Amended (a)(5).

29.11 Special provisions for the profession of certified shorthand reporting.

(a) Unprofessional conduct in the practice of certified shorthand reporting shall include all conduct prohibited by section 29.1 of this Part, except as provided in this section. The provisions of section 29.1 (b)(3) of this Part, except as it prohibits bribes, and section 29.1(b)(12)(i)(d),(e) and (g) of this Part shall not apply to the practice of certified shorthand reporting.

Historical Note

Sec. filed Aug. 2, 1977 eff. Oct. 1, 1977.

29.12 Special provisions for the profession of psychology. (a) Unprofessional conduct in the practice of psychology shall include conduct prohibited by sections 29.1 and 29.2 of this Part, except as provided in this section, and shall also include the following:

(1) in the conduct of psychological research, failing to undertake reasonable efforts to remove the possible harmful aftereffects of emotional stress as soon as the design of the research permits, or failing to inform prospective research subjects or their authorized representatives fully of the danger of serious aftereffects, if such danger exists, before they are utilized as research subjects;

(2) in the interpretation of the provisions of section 29.1(b)(5) of this Part and in the treatment of sexual dysfunction, as well as in other areas of the practice of psychology:

(i) immoral conduct shall include any physical contact of a sexual nature between psychologist and client; but immoral conduct shall not include the use of films and/or other audiovisual aids with individuals or groups in the development of appropriate responses to overcome sexual dysfunction;

(ii) in therapy groups, immoral conduct shall include activities which promote or allow explicit physical sexual contact between group members during sessions;

(3) the provisions of section 29.2(a)(5) of this Part shall apply to psychologists, who may also list in directories and on professional stationery areas of specialization and subspecialties recognized by the Board of Regents.

Historical Note

Sec. filed Aug. 2, 1977 eff. Oct. 1, 1977.

29.13 Special provisions for the profession of massage. (a) Unprofessional conduct in the practice of massage shall include all conduct prohibited by sections 29.1 and 29.2 of this Part, except as provided in this section, and shall also include the following:

(1) advertising not in the public interest shall include but not be limited to:

(i) using any term other than massage to refer to the service;

(ii) referring to any personal qualities of the practioner;

(iii) using pictures depicting the human form;

(iv) mentioning a proper name other than the licensee's full name with the title "masseur" or "masseuse" and/or name of the establishment;

(2) nothing in this Part shall be construed to prevent the ownership of a firm or corporation practicing in this State by an unlicensed person or persons, or to prevent any contractual arrangement between such person or persons and the professional licensee conducting such practice and computing the salary of professional employees, or the amount due the owner of such firm or corporation on the basis of a percentage of the receipts from the performance of professional services. This provision shall apply in lieu of section 29.1(b)(4) of this Part;

(3) the provisions of section 29.1(b)(5) of this Part prohibiting immoral conduct shall apply in the practice of massage. Massage of genital areas and massage of a client who is not properly draped for massage, or by a masseur or masseuse who is not properly dressed, shall be considered immoral conduct;

(4) the provisions of section 29.1(b)(7) and of section 29.2(a)(3) of this Part shall not apply to licensed practitioners of massage who are providing massage services to clients in a health spa or similar setting, for whom records shall be limited to name, address and date of treatment. These provisions shall apply, however, to massage services to a client on prescription by a licensed health practitioner for treatment of a medical condition.

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